

SCOTTISH BORDERS COUNCIL

**APPLICATION TO BE DETERMINED UNDER POWERS DELEGATED TO
CHIEF PLANNING OFFICER**

PART III REPORT (INCORPORATING REPORT OF HANDLING)

REF : 21/00965/FUL

APPLICANT : Waterloo Arms

AGENT : David Richard Amos Ltd

DEVELOPMENT : Erection of glazed covered pergola to existing outside seating area (part retrospective)

LOCATION: Waterloo Arms
Chirnside
Duns
Scottish Borders
TD11 3XH

TYPE : FUL Application

REASON FOR DELAY:

DRAWING NUMBERS:

Plan Ref	Plan Type	Plan Status
L01	Location Plan	Approved
P01	Proposed Plans & Elevations	Approved

NUMBER OF REPRESENTATIONS: 1
SUMMARY OF REPRESENTATIONS:

CONSULTATIONS

SBC Environmental Health: The proposed development is contrary to Policy HD3 of the Scottish Borders Local Development Plan 2016 in that the application will generate noise and have a substantial adverse impact on the amenity of the adjacent residential property Waterloo Cottage. The development will give rise to patron noise from both customers of the pub and hotel whilst drinking during licensed hours and smoking after hours due to the very close proximity of the site to openable windows and garden space of Waterloo Cottage.

If the development was completed as intended it would fall under the definition of "substantially enclosed" under The Smoking, Health and Social Care (Scotland) Act 2005 and The Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006 thus rendering it an offence for both the customer and business manager should the space be used for smoking.

SBC Heritage and Design: Informally indicated no comments.

SBC Roads: No objection.

Berwickshire Civic Society: No response.

Community Council: No response.

REPRESENTATIONS

One household objected to the application, raising the following points:

- Application supporting information does not clearly show the very close proximity (less than 2 metres) of the structure to the rear wall of their house, nor its elevated position well above the ground level of the property.
- Noise and smoke drift have a negative effect on the amenity of both the ground-floor living space and first-floor bedrooms, as well as the adjacent garden area.
- Completion of the solid polycarbonate roof panelling would in effect create a fully roofed, heated space, largely enclosed on three sides, with solid walls at either end. This seems to go beyond the usual understanding of both an outside area (with use naturally limited by seasonal weather conditions) and a pergola as an open-sided structure providing shade as an element of an outside area.
- The Waterloo Arms is currently well run, and noise has in the main been at reasonable levels, however there is no guarantee in the longer term that this would continue under different management or ownership.
- Once social distancing requirements and other Covid regulations are further relaxed or lifted completely, the capacity of the structure for larger groups for longer periods and the potential for intrusive noise would be considerably increased, with greater impact on amenity.
- Use of the existing structure throughout the winter months and as a smoking shelter and meeting place into the early hours during lockdown by people accommodated in the pub raises further cause for concern. The distance of the structure from the main building makes monitoring of its use by management and staff during and outside normal operating hours more difficult.
- If a permanent, roofed structure of this nature and/or a smoking shelter is required, this might be more appropriately sited close to the back wall and rear entrance of the Waterloo Arms itself.
- The need for temporary provision of this kind during the ongoing Covid restrictions is understood, but request that this application for completion and permanent planning permission be refused.

PLANNING CONSIDERATIONS AND POLICIES:

Local Development Plan 2016:

PMD1: Sustainability
PMD2: Quality Standards
HD3: Protection of Residential Amenity
EP7: Listed Buildings
IS7: Parking Provision and Standards

Recommendation by - Paul Duncan (Assistant Planning Officer) on 27th August 2021

BACKGROUND

This application seeks planning permission for the erection of a covered pergola in an outside area to the rear of the Waterloo Arms, Chirnside.

The application is partially retrospective as the timber pergola structure is already in place. It comprises six posts and two beams with twelve rafters laid across the top. The pergola is partially covered in polycarbonate sheeting. The application proposes to completely cover the roof.

The development was initiated without planning permission during the Covid-19 pandemic as a means of providing customers with a more open covered seating area as an alternative to sitting within the public

house. At the time of assessment, a significant proportion of the population has been vaccinated and restrictions have eased considerably, however case numbers remain high.

KEY PLANNING POLICIES

Policy HD3 aims to protect residential properties against inappropriate development that would result in the loss of amenity or privacy.

Local Development Plan policy EP7 (Listed Buildings) states that the Council will support development proposals that conserve, protect and enhance the character, integrity and setting of Listed Buildings.

ASSESSMENT

Principle

The information available indicates that the use of this outside space by guests is well established and is now lawful. The impact of this additional development, which would be expected to intensify the use of this area by making it more attractive to guests, is considered below.

Residential Amenity

The primary residential amenity considerations are noise, smoke, loss of light and privacy impacts. Waterloo Cottage is the nearest residential property and is located immediately to the south of the development. Whiteleas is also located nearby.

Loss of light and privacy would not be significant concerns. An existing high timber fence along the boundary with Waterloo Cottage is considered sufficient to mitigate potential privacy impacts. The pergola is only slightly higher than the height of the fence, so no significant loss of light impact has occurred.

In terms of noise and smoke, the Council's Environmental Health Service considers that a substantial adverse amenity impact would arise as a result of the proposed development. This would result from increased noise and smoke from customers using the facility, due to the very close proximity of the development to the neighbouring property. The Service objects to the application.

The application agent notes that permission is sought solely for the pergola structure, and only noise and smoke impacts relating to its use can be considered. Whilst this is correct, it seems clear that the development will make this outside area considerably more attractive to guests. The provision of this additional infrastructure can be expected to increase its usage and broaden its periods of use, exacerbating adverse noise and smoke impacts to the neighbouring property. Discussions with Environmental Health have confirmed that their objection stands. It is agreed that the proposed development would give rise to significant additional adverse noise and smoke impacts for residents of the neighbouring premises. Accordingly, the proposed development is deemed to be contrary to LDP Policy HD3 (Protection of Residential Amenity).

Economic and Public Benefits

The proposed development was initiated during the Covid-19 pandemic. It is commonly understood that the virus spreads less rapidly outdoors. The development therefore provides customers with a more appealing facility for social and recreational use. This has been a significant public benefit. The facility is also assumed to have benefited the business during this period. In the short term, these wider benefits are considered to outweigh the immediate harm to amenity arising from these proposals. It is therefore considered appropriate to allow the development to remain in place, but for a limited period of three months from the date of consent. Any greater length of usage would result in significant cumulative amenity harm which would not be outweighed by the wider benefits identified above.

Setting of Listed Buildings

The proposed development is to the rear of the Waterloo Arms, which is C listed. The neighbouring property, Waterloo Cottage, and its boundary wall, is also C listed. The Built Heritage Service is aware of the application and it has been indicated, on an informal basis, that the proposals raise no setting concerns.

The proposed development would be considered to have a neutral impact on the setting of nearby listed buildings. Policy EP7 (Listed Buildings) is considered to be satisfied.

Road Safety and Parking

The pergola is located in an area which may once have been used for parking. The Roads Planning Service has assessed the proposals and raise no concerns in terms of parking, or road safety more generally.

Other Matters

The Environmental Health Service notes that the development, if completed, would be in breach of The Smoking, Health and Social Care (Scotland) Act 2005 and The Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006 (commonly known as the smoking ban) which restrict smoking indoors in public houses. This is not a planning matter, but it would be appropriate to relay this information to the applicant by means of an applicant informative.

REASON FOR DECISION :

Subject to compliance with the schedule of conditions, the development will accord with the relevant provisions of the Local Development Plan 2016 and there are no material considerations that would justify a departure from these provisions.

Recommendation: Approved - conditions & informatives

- 1 The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans and specifications approved by the Planning Authority.
Reason: To ensure that the development is carried out in accordance with the approved details.
- 2 Permission is granted for a limited period of 3 months from the date of this consent. Thereafter, the pergola structure shall be dismantled and removed from the site within one week of the expiry of this period, unless a planning application to retain the development has been submitted to and approved by the Planning Authority.
Reason: It would be harmful to residential amenity to allow the development to remain indefinitely.

Informatives

It should be noted that:

- 1 The Environmental Health Service notes that the development, if completed, would be in breach of the The Smoking, Health and Social Care (Scotland) Act 2005 and The Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006 (commonly known as the smoking ban) thus rendering it an offence for both the customer and business manager should the space be used for smoking.

“Photographs taken in connection with the determination of the application and any other associated documentation form part of the Report of Handling”.